

Certified Professional Guardian Board Meeting

Monday, August 13, 2012 (8:00 a.m. – 9:30 p.m.)

Teleconference

AGENDA			
1.	Meeting Called to Order	Judge Lawler	8:00 – 8:05 a.m.
2.	Board Business <ul style="list-style-type: none"> • Proposed Minutes from July Meeting • Chair Report <ul style="list-style-type: none"> ○ Public Records Requests ○ Guardianship Postmortem Review 	Judge Lawler	8:05 – 8:10 a.m. <i>Page 1</i> <i>Page 7</i> <i>Page 16</i>
3.	Regulations Committee <ul style="list-style-type: none"> • SOP 404 • Disciplinary Regulation Default Procedure 	Chris Neil	8:10 – 8:30 a.m. <i>Page 20</i>
4.	Executive Session	Judge Lawler	8:30 – 9:20 a.m.
5.	Reconvene	Judge Lawler	9:20 – 9:30 a.m.
6.	Adjourn	Judge Lawler	9:30 a.m.

Next **Tentative** Meeting Date: **September 10, 2012 Teleconference**

*If you need an accommodation, please contact Shirley Bondon
at the Administrative Office of the Courts at 360.705.5302. This meeting site is barrier free.*

You may now watch and listen to the Certified Professional Guardian Board teleconference meetings on your computer. **We encourage you to join the meeting at or around 7:45 a.m. You must join the meeting no later than 8:10 am.**

Meeting Name: **CPG Board Teleconference** When: **Monday, August 13, 2012@ 8:00 a.m.**

To join the meeting: click on the link or copy and paste it into your browser <http://aocecccl.adobeconnect.com/cpg>

Sign in with your name as a guest. You will see another screen with some caveats. Click "Ok" and you will be in the meeting room. You may also be told that you need to install an Adobe flash player, allow the installation if you want to proceed. If you have followed the above viewing instructions and are still not able to join the meeting room, please call 253-218-7387.

If you have never attended a Connect Pro meeting before click on the link below and follow the instructions:

http://admin.adobe.acrobat.com/common/help/en/support/meeting_test.htm

Adobe, the Adobe logo, Acrobat and Acrobat Connect are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.



Certified Professional Guardian Board Meeting

Monday, July 9, 2012 (8:00 am – 9:30 pm)

SeaTac Office Center, 18000 International Blvd. Ste 1106,
SeaTac, WA

Proposed Meeting Minutes

Chair

Judge James Lawler

Members Absent

Judge Robert Swisher, Vice-Chair

Members Present

Ms. Robin Balsam
Mr. Gary Beagle
Dr. Barbara Cochrane
Ms. Nancy Dapper
Mr. William Jaback
Mr. Chris Neil
Judge Sally Olsen
Ms. Emily Rogers
Prof. Winsor Schmidt
Ms. Carol Sloan
Comm. Joseph Valente

Staff

Ms. Shirley Bondon
Ms. Katrin Johnson
Ms. Kim Rood

1. Call to Order

Judge Lawler called the meeting to order at 8:05 a.m.

2. Board Business

Approval of Minutes

Judge Lawler asked for changes or corrections to the June 25, 2012 minutes.

Motion: *A motion was made and seconded to approve the June meeting minutes as prepared. The motion passed.*

Chair Report: No Chair report

3. Applications Committee

Applications Regulation 100

Mr. Jaback said no public comments were received regarding changes to Applications Regulation 100. Two public comments were received regarding changes to Certification Regulation 700. These comments are included in the meeting materials on pages 28 and 29.

Motion: *A motion was made and seconded to approve the changes to Applications Regulation 100.*

Commissioner Valente asked about the wording in Section 102.3. Under the definition of conditional approval, conditional approval is granted to applicants that meet all initial application requirements. If all requirements are met, why is the approval conditional? Ms. Bondon clarified that it meant that all the application requirements had been met but not the certification requirements. Commissioner Valente suggested removing the word "initial".

Motion: *A friendly amendment was made and seconded to remove the word "initial" from the definition of Conditional approval in 102.3.*

Commissioner Valente asked if the phrase "Fee determined by the CPG board" in 103.3.9 was a typographical error. Ms. Bondon said that phrase should be removed.

Motion: *A friendly amendment was made and seconded to remove the phrase "Fee determined by the CPG board" in 103.3.9.*

There was a discussion about the fees and requirements schedule. The intent behind the fees and requirements schedule was to provide the Board with flexibility to change fees without changing regulations at the same time. There would not be a formal public comment process on the changes, but the public would have an opportunity to comment at a Board meeting.

Motion: *A motion was made and seconded to approve the changes to Applications Regulation 100 with two friendly amendments. The motion passed.*

Certification Regulation 700

The two public comments that were received on Certification Regulation 700 were discussed. There was also a discussion on the application and recertification deadlines.

The Board discussed the proposed two tiers of fees based on the requirement for errors and omission insurance which is based on the number of cases and the total value of estates managed. There was a suggestion that the wording in 704.3.2 be revisited.

Commissioner Valente proposed that both guardians and agencies should be exempt to be in the lower fee tier. He proposed moving to approve Regulation 700 in its entirety, and include in the motion that the Applications Committee reconsider the language in 704.3 regarding the duty of an individual guardian employed by an agency to provide proof of E and O insurance.

There was a suggestion to move definitions to the Fees and Filing Requirements Table and vote on Regulation 700.

Motion: *A motion was made and seconded to approve the changes to Applications Regulation 700 after removing the definition reference in 702.3 and correcting the numbering. The motion passed.*

Ms. Johnson asked if the Board wanted the changes to the appeals process and limited material on appeals to apply to appeals filed after today or new applications filed after today. The Board requested that it apply to applications filed after July 9, 2012.

Fees and Filing Requirements Table

The plan is to approve the Fees and Filing Requirements Table with an effective date of August 1, 2012 for new applications and a January 1, 2013 effective date for recertification fees. The table would be approved with the understanding that the Applications Committee will review the definitions and concerns about hearings, and will table this discussion until next month.

Motion: *A motion was made and seconded to approve the Fees and Filing Requirements Table with the current rates taking effect on August 1, 2012 for new applications and January 1, 2013 for certification maintenance. The motion passed.*

Credit Reports

Mr. Jaback would like to have a substantive discussion on credit reports in the Executive Session. There are some questions to discuss:

1. Should the Board and the Applications Committee rely on the applicants credit scores or credit report? The consensus is that if the credit score is under 700, the credit report will be reviewed in more detail.
2. Can the Board or Applications Committee deny an applicant with bad credit? If so, what is the threshold that would determine the applicant should be denied?
3. Should the Applications Committee and AOC staff require proof of bondability?

There was general agreement that the Board is not prohibited from denying an applicant based on credit information, but it is not a bright line. Credit is a factor to consider with other factors.

The Board preferred applicants submit both a credit score and a credit report. If three credit scores are reported, the scores will be averaged. A credit report from one agency is sufficient. The Board and AOC staff does not need to review a credit report if an applicant's credit score is over 700.

Educational Institution Accreditation

The Board has received an application with a degree and transcript from an institution without standard accreditation. The Board had two questions.

- 1 What entity is responsible for accrediting educational institutions?
- 2 Does GR 23 need to be amended to provide clarity on educational institution accreditation?

The Board discussed stipulating that transcripts and degrees must be from an institution accredited by the Council for Higher Education Accreditation and the U.S. Department of Education. The Board decided to discuss the question at the Applications Committee level and prepare a specifically worded motion for the next meeting. The Board agreed that GR 23 does not require amending. The definition for accrediting institution could be added to the Applications Regulations.

4. Education Committee

The Education Committee's recommendations for two emerging issues credits are

a) cultural diversity and b) how to manage a guardianship business.

Motion: *A motion was made and seconded to accept these two issues as emerging issues credits. The motion passed.*

The Board discussed the University of Washington course consisting of 16 hours of online instruction and eight hours of class time, and if this format violated the requirement of interactive instruction required by regulation 204.6.

Motion: *A motion was made and seconded to accept the University of Washington program as qualifying as a continuing education requirement under Regulation 204.6. The motion passed.*

5. Executive Session

Confidential.

6. Application Committee

Motion: *A motion was made and seconded to approve the application of Amy Fink.*

Motion: *A motion was made and seconded to approve the application of Nancy Gillard. The motion passed.*

Motion: *A motion was made and seconded to approve the application of Amber Zabel. The motion passed.*

Motion: *A motion was made and seconded to approve the application of Nicole Curley. The motion passed.*

Motion: *A motion was made and seconded to deny the application of William Morris. The motion passed.*

Motion: *A motion was made and seconded to table the application for Abacus Guardianship, Inc. pending further review of the questions raised in Executive Session. The motion passed.*

7. Adjourn

The meeting adjourned at 9:26 a.m. The next meeting is scheduled for August 13, 2012.

Recap of Motions from June 11, 2012 Meeting

Motion Summary	Status
Motion: A motion was made and seconded to approve the June meeting minutes as prepared.	Passed
Motion: A motion was made and seconded to approve the changes to Applications Regulation 100.	Passed
Motion: A friendly amendment was made and seconded to remove the word "initial" from the definition of Conditional approval in 102.3.	Passed
Motion: A friendly amendment was made and seconded to remove the phrase "Fee determined by the CPG board" in 103.3.9	Passed
Motion: A motion was made and seconded to approve the changes to Applications Regulation 100 with two friendly amendments.	Passed
Motion: A motion was made and seconded to approve the changes to Applications Regulation 700 after removing the definition reference in 702.3 and correcting the numbering.	Passed
Motion: A motion was made and seconded to approve the Fees and Filing Requirements Table with the current rates taking effect on August 1, 2012 for new applications and January 1, 2013 for certification maintenance.	Passed
Motion: A motion was made and seconded to accept these two issues as emerging issues credits.	Passed
Motion: A motion was made and seconded to accept the University of Washington program as qualifying as a continuing education requirement under Regulation 204.6.	Passed
Motion: A motion was made and seconded to approve the application of Nancy Gillard.	Passed
Motion: A motion was made and seconded to approve the application of Amy Fink.	Passed
Motion: A motion was made and seconded to approve the application of Amber Zabel.	Passed
Motion: A motion was made and seconded to approve the application of Nicole Curley.	Passed

Motion Summary	Status
Motion: A motion was made and seconded to deny the application of William Morris.	Passed
Motion: A motion was made and seconded to table the application for Abacus Guardianship, Inc. pending further review of the questions raised in Executive Session.	Passed

Action Items for Next Meeting

Action Item	Who	Status
Reconsider the language in 704.3 regarding the duty of an individual guardian employed by an agency to provide proof of E and O insurance	Applications Committee	In Process
Define accrediting institution and prepare a specifically worded motion for the next meeting.	Applications Committee	In Process



August 13, 2012

TO: Certified Professional Guardian Board (Board)

FROM: Shirley Bondon

RE: General Rule 31A – Access to Administrative Records

Background

At its meeting on February 18, 2011, the Board for Judicial Administration (BJA) adopted a motion to propose to the Supreme Court a new General Rule 31A. The suggested new rule sets forth standards and procedures for providing public access to the Washington State judiciary's administrative records.

The BJA developed its proposal after creating a Public Records Work Group, which included members both from within the judiciary and from outside groups interested in public access to judicial records. The Work Group recommended new standards and procedures for providing public access to the judiciary's administrative records. The BJA carefully reviewed the Work Group's recommendations, made several changes, and approved the suggested new GR 31A for the Supreme Court's consideration.

The BJA, and its Public Records Work Group, believe that public access to the judiciary's administrative documents is better addressed by court rule than by inclusion within the Public Records Act (PRA). The BJA decided to draft a new rule – separate from GR 31 -- to address this topic, rather than expanding GR 31 to cover administrative records. Having two distinct rules makes clear that the existing procedures in GR 31 for access to case-related records are separate from, and are not being changed by, the new provisions on access to administrative records.

Entities covered by rule. The suggested rule would apply to judicial agencies and to courts. A few judicial agencies are specifically exempted from the suggested rule, for reasons that are set forth in explanatory comments in suggested GR 31A (c).

Categories of records. The suggested rule divides judicial branch records into three categories:

"court files", which are governed by GR 31 and not by the suggested GR 31A; chambers records; and administrative records.

Chambers records. Chambers records, as defined in section (d)(4), are not public records, and are not subject to disclosure. This provision protects judicial officers from intrusion into their decision-making process. See section (d)(4) and its accompanying comments.

Presumptive access to administrative records; exemptions. Administrative records are broadly defined in section (d)(2). Administrative records are presumptively open to public access, except as exempted or prohibited in the suggested rule or in other statutes, court rules, or other laws (including the PRA). See section (e)(1).

The suggested rule incorporates by reference existing exemptions and prohibitions from other sources of law and explicitly states 11 exemptions (see suggested GR 31A (e)(1)(B)). Some of the exemptions in the suggested rule have counterparts in the PRA. For example, the PRA has a "deliberative process" exemption, which extends confidentiality to certain draft documents containing opinions or recommending policies as part of an agency's deliberative or policy-making process. RCW 42.56.280. Under case law, the PRA's deliberative process exemption extends only until such time as the agency makes the final policy decision, at which time the deliberative-process draft documents become open to public access. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 256, 884 P.2d 592 (1994). The suggested rule incorporates a modified version of the PRA's exemption; the suggested rule restates the PRA exemption but adds a sentence providing that the deliberative-process draft documents remain confidential after the final policy decision is made. See section (e)(1)(B)(4) and the accompanying comment.

Procedures. Procedures for obtaining public access to administrative documents are found primarily in section (e)(3). Procedures are provided for requesting records and for responding to records, each of which have many parallels with PRA procedures. A bifurcated, expedited appeals process is provided in section (e)(3)(B)(4), with the intent of providing prompt, final decisions. See the comment that follows sections (e)(3)(B)(4) and (5). The fees that courts and judicial agencies may charge requesters are set forth in section (g).

Sanctions for noncompliance. Monetary sanctions for noncompliance are more limited than under the PRA. See section (e)(3)(B)(6). The suggested rule precludes the imposition of per diem fines and penalties, and it limits the circumstances under which reasonable attorney fees and costs may be awarded. The suggested rule clarifies that monetary sanctions may not be assessed against individuals, only against the applicable entity. See section (e)(3)(B)(6)(iv).

Especially burdensome requests. Several sections provide courts and judicial agencies with tools for addressing particularly broad records requests and other requests that would significantly affect judicial functioning. See section (e)(3)(A)(6) (providing special procedures for extraordinary requests that impact resource limits); section (g)(4)

(allowing research fees to be charged for particularly time-consuming records requests); section (g)(3) (allowing entities to provide documents in installments and to require deposits); and section (e) (placing limitations on inmate requests that involve harassment or threats to security, similar to a corresponding provision in the PRA).

Best practices. The suggested rule calls for the creation and recognition of best practices, so that the necessarily general provisions in the suggested rule can be addressed in greater detail. Courts and judicial agencies would be able to rely on the best practices, once approved by the Supreme Court, when responding to records requests. See section (h).

Delayed effective date and prospective application. Finally, the suggested rule would have a delayed effective date, allowing time for training, development of best practices, and implementation. See section (i)(1). The rule would apply prospectively only, in the sense that it would apply only to documents that are created on or after the rule's effective date. See section (i)(1). Documents created before that date would be analyzed according to other court rules, applicable statutes and the common law balancing test, but the Public Records Act would be used for guidance only. See section (i)(2).

The Supreme Court denied the Certified Professional Guardian Board's request for exemption from GR 31A, but agreed to include the Board's exemptions in the rule. Given that this language would appear in a rule of general application, rather than as part of the Board's set of regulations, explanatory language must be added to make clear the difference between a grievance and a complaint. Otherwise, if we just say the records become public upon the filing of a complaint, general readers will be too easily misled into thinking that a complaint is the same thing as a grievance, which would make the language very confusing.

Rick Neidhardt from AOC Legal Services has proposed adding the underlined language below to the Board's Administrative Regulation 003.2.2 to provide clarity and including the language below from the Board's Administrative Regulation 003 in GR 31A. All other Board exemptions are already included in GR 31A.

Investigative records compiled by the Board as a result of an investigation conducted by the Board as part of the application process, while a disciplinary investigation is in process under the Board's rules and regulations, or as a result of any other investigation conducted by the Board while an investigation is in process. Investigative records related to a grievance become open to public inspection upon the filing of a Board-approved complaint for disciplinary action.

Deliberative records compiled by the Board or a panel or committee of the Board as part of a disciplinary process.

Dismissed grievances shall be disclosed upon written request using established procedures for inspection, copying, and disclosure with identifying information about the grievant, incapacitated person, and professional guardian and/or agency redacted. A request for dismissed grievances shall cover a specified time period of not less than 12 months.

The identity of a person requesting an ethics advisory opinion is confidential and not subject to public disclosure.

When GR 31A is effective, the Board's Administrative Regulation 003 will need to be revised

.

Administrative Regulations

Adopted 2-11-08

Contents

000	Administrative Regulations.....	1
001	Purpose of Administrative Regulations.....	1
002	Definitions.....	1
003	Public Records.....	3
004	Policies	4
005	Best Practices.....	4
006	General Provisions.....	5

000 Administrative Regulations

001 Purpose of Administrative Regulations

The regulations shall include administrative items for the Certified Professional Guardian Board (Board) such as definitions applicable to all aspects of professional guardianship related to the Board, public records and records retention, policies, best practices, and related administrative items.

002 Definitions

These definitions apply to any regulations adopted by the Board unless the context clearly requires otherwise.

002.1 An “Agreement Regarding Discipline” is a written settlement agreement approved by the professional guardian and the Board of a grievance or complaint against a professional guardian. The final agreement, approved by the parties, is a public record available for inspection, copying, and disclosure.

002.2 “Certification of an individual” is the process by which an individual becomes qualified to perform services as a professional guardian as defined in RCW 11.88.008. Certification is given to individuals that the Board believes to have attained a minimum level of experience and an understanding of the responsibilities of guardianship; have not been disqualified by prior conduct, such as discharge from other cases, or been shown not to be trustworthy; know how to make decisions for someone else; and who will make those decisions in an ethical manner and in compliance with the standards of practice.

002.3 “Certification of an agency” is the process by which an agency becomes qualified to perform services as a professional guardian as defined in RCW 11.88.008. Certification is given to agencies that meet the requirements for certification of an agency in General Rule of Court (GR) 23.

- 002.4 A “complaint” is the document filed by the Board during a disciplinary proceeding for the purpose of bringing the matter before a hearing officer for a factual hearing on the issue of whether or not the professional guardian’s conduct provides grounds for the imposition of disciplinary sanctions by the Board. In a complaint, the Board describes how the professional guardian allegedly violated an applicable statute, fiduciary duty, standard of practice, rule, regulation, or other authority. The Board must approve the filing of a complaint.
- 002.5 “Decertification” of a professional guardian or agency occurs when the Board or the Supreme Court cancels the certification of a professional guardian or agency for any reason.
- 002.6 To “deliberate” is to consult with others in a process of exercising predecisional opinions and making recommendations prior to reaching a decision. “Deliberative records” are records that contain preliminary or draft opinions or recommendations as part of a deliberative process.
- 002.7 “Disciplinary records” are the records maintained by the Washington State Administrative Office of the Courts (AOC) of any disciplinary review, sanction, or other action imposed by the Board on the professional guardian, which shall include the reason for the Board’s action. The AOC shall maintain such records as defined by records retention schedules of the judicial branch and the AOC.
- 002.8 A “disciplinary sanction” is any punitive or remedial action taken by the Board against a professional guardian as a result of a disciplinary proceeding under the rules and regulations of the Board. A disciplinary sanction may be decertification, suspension, a prohibition on taking new cases, letter of reprimand, or letter of admonition. A disciplinary sanction is also any remedy the Board imposes on the professional guardian for the purpose of ensuring compliance with the duties of a professional guardian, such as continuing education, auditing practices, restitution, payment of the costs of an investigation, and any other remedy ordered by the Board.
- 002.9 (Repealed section 8-10-09)
- 002.10 “Executive session” is a meeting of a quorum of the Board, declared by the Board as an executive session, which meeting is not open to the public.
- 002.11 A “grievance” is a written document filed by any person with the Board, or filed by the Board itself, for the purpose of commencing a review of the professional guardian’s conduct under the rules and disciplinary regulations applicable to professional guardians. The grievance must include a description of the conduct of the professional guardian that the grievant alleges violates a statute, fiduciary duty, standard of practice, rule, regulation, or other authority applicable to professional guardians, including the approximate date(s) of the conduct.
- 002.12 A “hearing” is a proceeding that allows parties an opportunity to be heard regarding an issue. A hearing officer, appointed by the Chair of the Board as set forth in the Disciplinary Regulations, rules on all evidence, procedures, and legal issues. The Board may be represented by an attorney or other staff, and the professional guardian may be represented by an attorney. Each party may present evidence and argument as directed by these regulations and the hearing officer.

- 002.13 An “incomplete grievance” is one that is unclear or substantially lacking in specificity so as to make the grievance inactionable.
- 002.14 “Investigative records” are records related to an investigation pursuant to GR 23 and the disciplinary regulations of the Board into the conduct of a professional guardian prior to the imposition of any disciplinary sanction or dismissal. (Revised 3/8/10).
- 002.15 “Professional guardian” is a guardian as defined by RCW Chapter 11.88.008 and includes both the individual and the agency.
- 002.16 “Revoked” or “revocation” means a professional guardian’s certification is cancelled by the Board or the Washington State Supreme Court pursuant to the procedures set forth in these disciplinary regulations or any other regulations of the Board, as a result of the professional guardian’s failure to comply with any Board rule or regulation.
- 002.17 A “suspension” of a professional guardian occurs when the Board or the Supreme Court orders that the certification of a professional guardian or agency be temporarily cancelled for a specified period of time. A suspended professional guardian or agency may not act as a certified professional guardian for any person during the period of suspension.
- 002.18 “Voluntary surrender” means a process where a certified professional guardian voluntarily decides to discontinue practice in the profession and surrenders his or her certification pursuant to regulations adopted by the Board.

003 Public Records

- 003.1 Disclosure. Existing records that are prepared, owned, used, or retained by the Board shall be disclosed upon request using established procedures for inspection, copying, and disclosure except as otherwise provided in rules, regulations of the Board, or other authority.
- 003.2 Exemptions from Disclosure. The following records are exempt from public inspection, copying, and disclosure:
- 003.2.1 Test questions, scoring keys, test results, test answers test scores and other examination data used to administer a certification or license examination.
 - 003.2.2 Investigative records compiled by the Board as a result of an investigation conducted by the Board as part of the application process, while a disciplinary investigation is in process under the Board’s rules and regulations, or as a result of any other investigation conducted by the Board while an investigation is in process.
 - 003.2.3 Investigative records compiled by the Board, the nondisclosure of which is essential to effective law enforcement.
 - 003.2.4 Deliberative records compiled by the Board or a panel or committee of the Board as part of a disciplinary process.
 - 003.2.5 Deliberative records of the Board, a hearing officer or hearing panel, review panel, or board committee made confidential by a court order.

003.2.6 Personal information, including, but not limited to, home address, home telephone number, financial information, health information, Social Security number, and date of birth.

003.2.7 Certain personal and other records of an individual such that disclosure would be highly offensive to a reasonable person and is not of legitimate concern to the public.

003.2.8 Other records related to the Certified Professional Guardian Board that are required by law, rule, regulation, court order, or other authority to be confidential.

003.3 Other Records.

003.3.1 Dismissed grievances shall be disclosed upon written request using established procedures for inspection, copying, and disclosure with identifying information about the grievant, incapacitated person, and professional guardian and/or agency redacted. A request for dismissed grievances shall cover a specified time period of not less than 12 months. (Amended 6/14/10)

003.3.2 The identity of a person requesting an ethics advisory opinion is confidential and not subject to public disclosure.

003.4 Records Retention. Records related to the Certified Professional Guardian Board shall be retained in accordance with records retention schedules for the judicial branch and the Washington State Administrative Office of the Courts (AOC).

003.5 Posting of Disciplinary Actions. Disciplinary sanctions involving admonitions or reprimands will be archived twelve months after the disciplinary action is completed. Disciplinary actions will remain permanently linked to an individual certified professional guardian's listing on the web site. (Adopted 1-9-12)

004 Policies

004.1 Board Attendance. Board members need to participate in a minimum of 80% [to be rounded down] of full Board meetings held during the calendar year. In other words, a member may not have more than two unexcused absences during a calendar year.

004.2 Rules Committee (Adopted 7-12-04)

004.2.1 The Chair of the Board may appoint a Rules Committee, if necessary. The Chair shall designate the members of the committee, the chair of the committee, and the term of the committee members.

004.2.2 The duties of the committee shall be:

004.2.2.1 Coordinate proposed regulation changes for consistency among all regulations.

004.2.2.2 Review of all regulations for necessary updates.

004.2.2.3 Other duties as assigned by the Chair of the Board.

005 Best Practices

(RESERVED)

006 General Provisions

006.1 Format for Documents Filed with the Board

006.1.1 All documents filed with the Board, on any matter before the Board, must be on letter-size paper (8 ½ inches by 11 inches). Documents filed may not include any tabs or other dividers, except that colored letter-size paper may be used for dividers between sections.

006.2.2 This rule is not mandatory for exhibits, but the use of exhibits that comply with this regulation is encouraged if it does not impair legibility.

Guardianship Postmortem Review

Purpose

The Certified Professional Guardian Board (Board) scheduled a postmortem review of the guardianship of an 88-year-old Anacortes woman and a 91- year-old Sedro-Woolley man, both living in a nursing home. Sharon Nielson, a certified professional guardian, who was decertified for violating guardian standards of practice, was accused of suspicion handling of more than \$370,000 from the bank accounts of the incapacitated persons referenced above. The purpose of the postmortem is to learn from this set of circumstances; to review and analyze the guardianships from selection of the guardian to decertification. The review should identify what went well, what went poorly and should identify what should be done to prevent issues like this in the future. The review should provide lessons learned for the Board, the courts and guardians.

Review Team & Staff

Review team members:

- Commissioner Craig Adams, Pierce County Superior Court
- Tom Goldsmith*, a concerned member of the public
- David Lord, Disability Rights Washington
- Glenda Voller, a certified professional guardian and President of the Washington Association of Professional Guardians
- John Barnett, President AARP Washington State
- Page Ulrey, Sr. Deputy Prosecuting Attorney, Elder Abuse Unit, King County Prosecutor's Office.
- Kathy Van Olst, Sr. Deputy Prosecuting Attorney, Elder Abuse Unit, King County Prosecutor's Office

Staff:

Shirley Bondon, Administrative Office of the Courts, Court Access Programs

Carol Smith, Administrative Office of the Courts, Grievance Investigator

****Judge Lawler will discuss concerns regarding Mr. Goldsmith's participation on the review committee related to a Court of Appeals decision involving Mr. Goldsmith's conduct in Guardianship of Thomas Goldsmith, Sr.***

Procedures and Related Documents to Review

- **Guardian Qualifications and Selection**
 - GAL Process
 - Guardian Certification
- **Guardian Monitoring and Supervision**
 - Court Reports
 - Court Communication
 - With other Courts

- With the Board
 - Complaints Regarding Guardian Conduct
- **Guardian Regulation**
 - Audits
 - Complaints Regarding Guardian Conduct
 - Disclosures
- **Other sources of Information**

Guardian Qualifications and Selection

- **Interview GAL and review GAL Report to determine how the items required by RCW 11.88.90, which are provided in pertinent part below, were assessed.**
 - (5) The guardian ad litem appointed pursuant to this section shall have the following duties:
 - I To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:
 - (i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and
 - (ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;
 - (f) To provide the court with a written report which shall include the following:
 - (iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;
 - (6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to subsection (5)(f) of this section.
- **Review Guardian's Certification File**
 - Background Check
 - Education
 - Work Experience

Guardian Monitoring and Supervision

- **Review Periodic Court Reports**
- **Review Court's Communication Regarding Guardian**
 - With other Courts
 - With the Board
 - Complaints Regarding Guardian Conduct

Guardian Regulation

- **Review Board Audit of Guardian's Reporting**
- **Review Guardians Annual Certification and Disclosures**
- **Review Board Complaints Regarding Guardian Conduct**
- **Review Decertification**

Other Sources of Information

- **DSHS Nursing Home Inspection Reports**
- **Long Term Care Ombudsmen**
- **Attorney for the Successor Guardian**
- **Successor Guardian**

General

- **List items that went well.**
- **What could have been done better? How?**
- **List items that need to be improved. Suggest how to improve.**
- **What could have prevented or minimized exploitation?**
- **Any other issues you can think of?**
 - Did the GAL process fail in having the professional appointed?
 - Was this a greedy guardian who just took advantage? If so -
 - Could this have been caught by periodic reporting?
 - Did periodic reporting occur? If so, what did it look like?

Recommendation Report

Thomas T. Goldsmith

18 Commercial St
Salem, MA 01970

Phone: 617-723-9494

TTGsmith@TGandA.com

MBA, Harvard Business School
BA, Lawrence University, Mathematics

Summary:

Mature, public oriented professional, with experience ranging from city and state policy and non-profit work, through small-business management and services, up to large corporate environments. Information technology experience has always been complemented by working with common-sense advocates and managers with international and cross-cultural experience.

Early experience with New York City's child welfare system set a lifelong inclination to look for humane solutions for knotty social and economic problems. A lesson came early, that while proposed solutions to obvious problems may seem simple, effective solutions often remain elusive. Experience with the Washington State professional guardian community over the past four years has anchored this view, as my effort to understand this system has taken root.

Experience:**Fidelity Investments, Boston, Massachusetts**

Consultant Engineer automated web testing and voice response system development.

Bolt, Beranek, & Newman (BBN), Cambridge, Massachusetts

Software Engineer, working with speech recognition and processing systems.

Thomas Goldsmith & Associates, Boston

Information technology management consulting. Clients included IBM Denmark, Manchester Growth Fund, Genesis Pharmaceuticals, and The Bioengineering Group.

IBM Sweden, Stockholm and Gothenburg, Sweden

Consulting Systems Engineer, working with customer personnel at all levels. I repeatedly used business training and experience to understand strategic issues, while evaluating and providing technical solutions in international environments.

My work included all phases of software development, and extended into project management, serving smaller European firms, upward to giants including IBM and General Motors.

Thomas Goldsmith & Associates, Boston

Policy management and information technology consulting. Clients included New York City Office of Budget Management, Edwin Gould Foundation, Boston Children's Museum, Northeast Airlines, Stop & Shop Stores, Massachusetts General Hospital. This work included being responsible for three accounting and financial reporting systems for smaller-sized organizations.

McBer and Company, Boston

Served as Controller for McBer and Company, a behavioral science consulting and training firm. Experience included government accounting and associated audits.

Board of Directors Experience:**Massachusetts Cultural Alliance, Boston**

Served on Board, including responsibility for audit firm liaison.

Fluent in Swedish. Was bonded for Fidelity.

Personal interests include family, woodworking, and music.

20120723

August 13, 2012

TO: Certified Professional Guardian Board (Board)

FROM: Regulations Committee

RE: SOP 404 Meaningful Visit and Disciplinary Regulation Default Procedure

Proposed Standard of Practice

During the June meeting of the Certified Professional Guardian Board, Chris Neil, chair of the Regulations Committee, discussed the committee's deliberations regarding certified professional guardians (CPG) delegating responsibility to visit incapacitated persons served to employees of the CPG or CPG agency. The Regulations Committee had discussed a proposed standard of practice (SOP) allowing delegation to qualified employees. Without a definition for "qualified" the proposed SOP was problematic. Options discussed included, no delegation of the visit, delegation to specified individuals, or delegation at the CPGs discretion.

The Board discussed this issue and one member recommended asking CPGs to document the qualifications of employees they delegate to visit incapacitated persons and agree to provide said documentation upon request. Another member suggested establishing qualifications for delegated visitors. After some discussion, the Board asked the Regulations Committee to consider the matter again and to bring to the next board meeting, a range of proposals and options including specific proposed language for a standard of practice.

The Regulations Committee¹ met Friday, August 3 and agreed to submit the following recommendation to the Board, which they believe represents a compromise respecting the full range of views.

¹ Winsor Schmidt was unable to attend the meeting on August 3, 2012. Given Winsor's comments at prior meetings, Regulations Committee members want the record to reflect their belief that it is unlikely Winsor will agree with the recommendation submitted by the committee.

Version 1, voted on by the committee:

SOP 404.3 A certified professional guardian or certified professional guardian agency may delegate the responsibility for in-person visits with a client to: (a) a noncertified professional employee of the certified professional guardian or agency, (b) an independent contractor or (c) a third party who has been approved by the court. In advance of actual delegation, the responsible certified professional guardian must carefully consider the needs of the client and the education, training and experience of the (a) employee, (b) independent contractor or (c) third party to be approved by the court, to determine if that person is suitable for the task. The responsible certified professional guardian must document the factors considered in determining suitability in a document dated and signed by the certified professional guardian and placed in the client's office file. This document must be available, on request, to the Certified Professional Guardian Board.

Version 2, revised after the meeting, not voted on by the committee:

SOP 404.3 A certified professional guardian or certified professional guardian agency may delegate the responsibility for in-person visits with a client to: (a) an employee of the certified professional guardian or agency, (b) an independent contractor or (c) any individual who has been specifically approved by the court. In all cases, before the delegation, a certified professional guardian with final decision making authority on the case must document the suitability of the delegation, having considered: (a) the needs of the client, and (b) the education, training and experience of the delegate. The documentation shall be: (a) dated and signed by the certified professional guardian, (b) placed in the guardian's file for that client, and (c) available to the Certified Professional Guardian Board.

Proposed Default Procedure

The Regulations Committee was asked to draft a default procedure to resolve a current problem in the Disciplinary Regulation.

Currently, when a CPG fails to respond to a complaint, the Board is required to proceed with a hearing as if the CPG is participating in the process, even if they are not. This requires hiring a hearing officer and incurring unnecessary cost. The Regulations Committee submits the following proposed default procedure, modeled after the default procedure for limited practice officers:

DEFAULT PROCEEDINGS

The following is proposed language for a default proceeding, modeled after the Washington State Rules For Enforcement of Lawyer Conduct and the Rule for Enforcement of Limited Practice Officer Conduct.

(a) Entry of Default.

(1) *Timing.* If a certified professional guardian (guardian), after being served² with a notice to answer as provided in Reg. 510.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, the Board's attorney of record in the disciplinary proceeding may serve the guardian with a written motion for an order of default.

(2) *Motion.* The Board's attorney of record must serve the guardian with a written motion for an order of default and a copy of this regulation at least five (5) days before entry of the order of default. The motion for an order of default must include the following:

(A) the dates of filing and service of the notice to answer, formal complaint, and any amendments to the complaint; and

(B) the Board's attorney of record statement that the guardian has not timely filed an answer as required by Reg. 510.4 and that the Board's attorney of record seeks an order of default under this regulation.

(3) *Entry of Order of Default.* If the guardian fails to file a written answer with the Administrative Office of the Courts (AOC) within five (5) days of service of the motion for entry of an order of default, the hearing officer, or if no hearing officer has been assigned, the chair of the Standard of Practice Committee, on proof of proper service of the motion, enters an order finding the guardian in default.

(4) *Effect of Order of Default.* Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the guardian may not participate further in the proceedings unless the order of default is vacated under this regulation.

(b) Proceedings After Entry of an Order of Default.

(1) *Service.* The AOC serves the order of default and a copy of this rule under regulation 510.4.2.

(2) *No Further Notices.* After entry of an order of default, no further notices must be served on the guardian except for copies of the decisions of the hearing officer or the Board.

² Minority Opinion: The service requirements of the CPGB are by "registered or certified mail". Disciplinary matters for Attorneys, Judge and Limited Practice Officers require the higher and more expensive personal services. Default proceeding against Attorneys and Limited Practice Officers also require the use of a specific document describing the effect of a default proceeding.

(3) *Disciplinary Proceeding.* Within 60 days of the filing of the order of default, the hearing officer or the Board must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer or Board, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. The attorney of record for the Board may present additional evidence including, but not limited to, requests for admission under regulation 511.8, and depositions, affidavits, and declarations regardless of the witness's availability.

(c) Setting Aside Default.

(1) *Motion To Vacate Order of Default.* A guardian may move to vacate the order of default and any decision of the hearing officer or Board arising from the default on the following grounds:

(A) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;

(B) erroneous proceedings against a guardian, who was, at the time of the default, incapable of conducting a defense;

(C) newly discovered evidence that by due diligence could not have been previously discovered;

(D) fraud, misrepresentation, or other misconduct of an adverse party;

(E) the order of default is void;

(F) unavoidable casualty or misfortune preventing the guardian from defending; or

(G) any other reason justifying relief from the operation of the default.

(2) *Time.* The motion must be made within a reasonable time and for grounds (A) and (C) within one year after entry of the default. If the guardian's motion is based on allegations of incapability of conducting a defense, the motion must be made within one year after the disability ceases.

(3) *Burden of Proof.* The guardian bears the burden of proving the grounds for setting aside the default. If the guardian proves that the default was entered as a result of a disability which made the guardian incapable of conducting a defense, the default must be set aside.

(4) *Service and Contents of Motion.* The motion must be filed and served under regulation 510.4.34.1 and 510.4.4 and be accompanied by a copy of guardian's proposed answer to each formal complaint for which an order of default has been

entered. The proposed answer must state with specificity the guardian's asserted defenses and any facts that guardian asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

- (A) the date on which the guardian first learned of the entry of the order of default;
- (B) the grounds for setting aside the order of default; and
- (C) an offer of proof of the facts that the guardian expects to establish if the order of default is vacated.

(5) *Response to Motion.* Within ten days of filing and service of the motion to vacate, the attorney of record for the Board may file and serve a written response.

(6) *Decision.* The hearing officer decides a motion to vacate the order of default on the written record without oral argument. If the proceedings have been concluded, the chair of the Board assigns a hearing officer to decide the motion. Pending a ruling on the motion, the hearing officer may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing officer has discretion to order appropriate conditions.

(7) *Appeal of Denial of Motion.* A guardian may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the hearing officer's decision. The guardian must file the notice of appeal within ten days of service on the guardian of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

(8) *Decision To Vacate Is Not Subject to Interim Review.* An order setting aside an order of default is not subject to interim review.

Default Background

The Board's current Disciplinary Regulation regarding default is provided below:

511.5 Default: In no case shall a default be entered against the professional guardian. If the professional guardian fails to answer the complaint within the time allowed by these regulations, the Hearing Officer shall proceed to a determination of the matter in the same manner as though the professional guardian were present and had answered by admitting all allegations in the complaint. All violations in the complaint are deemed

established for the purpose of imposing discipline. No notice of the date of hearing or of the taking of depositions of witnesses to be used at the hearing shall be required to be given to a professional guardian who fails to timely answer the complaint and the professional guardian may not participate in the proceedings. If the professional guardian has answered but fails to attend the hearing at the time set, the Hearing Officer shall proceed to a determination of the matter in the same manner as though the professional guardian were present.

Purpose of Default

The theory behind default judgment is that, by its failure to timely answer, the defaulting party implicitly admits the action is valid, admits no defense, and consents to suffer judgment. When these presumptions are not correct, the default is a penalty for failure to comply with rules and deadlines. In considering allowing a default judgment, the committee must consider two competing policy concerns; (1) the need for prompt and efficient handling of complaints and (2) a just resolution of complaints on the merits.

The Need for Prompt and Efficient Handling of Complaints

Resolving complaints promptly serves the best interest of all involved. Grievants, incapacitated persons, their family, friends and guardians, and the public want and deserve prompt resolution to make it possible for everyone to obtain justice, get closure and hopefully move on from what has probably been a stressful and emotional time. Holding a hearing with a hearing officer and an Assistant Attorney General without the guardian or guardian's counsel is an inefficient use of Board funds as well as inefficient use of everyone's time.

Board rules should be respected and followed. Professional guardians should be expected to behave in a professional manner. Condoning unprofessional behavior, such as delay and failure to follow rules, sends a message that perhaps deadlines and rules aren't important. Given that guardians are required to file reports and complete other paperwork in a timely fashion, adherence to rules and deadlines is an important part of the job.

Just Resolution of Complaints on the Merits

The Board, like courts, would likely prefer to hear from the guardian when deciding complaints. A decision based only on the presentation of one party may not result in the most just decision. A guardian should have his or her day in court, except when there is willful default.

Other Concern

Defaults can be set aside for good cause.

Rules Governing Default

Washington State Administrative Law

Under the Washington State Administrative Code (WAC) defaults are governed by [RCW 34.05.440](#)

Washington State Superior Court Civil Procedure

[Rule 55, Default and Judgment](#)

Washington State Bar Association

[ELC 10.6 DEFAULT PROCEEDINGS](#)

Limited Practice Officers

[ELPOC 10.6 DEFAULT PROCEEDINGS](#)

Shirley,

I am sorry that I missed the August 3rd meeting. I was invited to give a presentation at the same time to the Southeastern Association of Law Schools 2012 Annual Conference.

I agree with the proposed default procedure. Some minor proposed edits are suggested in track changes on page 6 of the attachment.

I respectfully disagree with proposed SOP 404.3.

First, does the proposed SOP 404.3 replace the current SOP 404.3 (http://www.courts.wa.gov/committee/?fa=committee.child&child_id=30&committee_id=117#404), or should the proposal be 404.4?

I agree with Judge Quinn-Brintnall's conclusions regarding the non-delegability of guardian visits in *DHHS v. Raven*: "The facts of Ida's growing urgent need for additional care demanded frequent meaningful home visits and Raven should have made such visits to satisfy her guardianship duties. Raven's inaction after May 2006, when Ida had no primary physician and received inadequate in-home care, was a blatant dereliction of her duties." (p. 26, concurring opinion)

The majority opinion stated: "[W]e hold that Raven's duty generally was to provide, to the extent reasonably possible, all the care Ida needed. We view the specific acts, such as infrequent visits, which the Board characterized as duties, to be evidence of Raven's failure to meet her general duty." (p. 23)

The US Government Accountability Office (GAO) cites two Washington cases where the certified professional guardian failed to visit wards for 8 months. [*Guardianships: Cases of Financial Exploitation, Neglect, and Abuse of Seniors* (2010), p. 15]

The GAO also cited mandatory guardian visits in other states (New York, p. 27; Iowa, p. 33; Texas, p. 34). In addition to New York (NY Mental Hygiene section 81.30), Iowa (Iowa Code Ann. Section 633.669), and Texas (Texas Probate Code section 743), Alaska, Arizona, California, Delaware, Maryland, Florida, Illinois, Nevada, Oklahoma, Vermont, and the Washington public guardian office have provisions for guardian visitation.

Guardian visits comply with the National Guardianship Association *Standards of Practice* [Standards 13(V) and 23], as well as the *Uniform Guardianship and Protective Proceedings Act* (1998), sections 207(b)(1), 314(b)(1).

The relevant background paper prepared for the 2011 Third National Guardianship Summit concludes:

"The types of requirements in the standards that a guardian would likely be held to

violate relate to core practices that should be a minimum standards rather than aspirational, such as visiting the ward once a month, reporting to the court, developing a written guardianship plan, avoiding conflicts of interest, and following specific financial practices when dealing with the ward's assets. As long as the standards are drafted in such a way to give guidance without mandating specific actions except for core responsibilities, making compliance mandatory would not be unreasonable and would have the significant benefit of requiring the guardian to take the standards seriously."

"A Call for Standards: An Overview of the Current Status and Need for Guardian Standards of Conduct and Codes of Ethics," by Karen Boxx (UW School of Law) and Terry Hammond (former NGA Executive Director), p. 22.

I think that ward visitation by the guardian is a non-delegable fiduciary duty; a core practice and responsibility. I do not think that the authorization of agency certification in GR23 was intended to dilute such guardian standards of practice as guardian contact with the IP, or that guardian training and certification should be undermined by allowing non-certified employees to exercise guardian fiduciary duties.

Many state and national guardians readily comply with the visitation standard.

Thank you for consideration of these comments.

Winsor